



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------|-------------|----------------------|---------------------|------------------|
| 09/707,156 | 11/06/2000 | Vivian A. Schramm | MRS-015U | 8663 |
| 52966 | 7590 | 11/02/2012 | | |
| Schramm-Personal-ACT | | | | |
| Michael R. Schramm | | | | |
| 350 West 2000 South | | | | |
| Perry, UT 84302 | | | | |
| EXAMINER | | | | |
| BEKKER, KELLY JO | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1791 | | | | |
| NOTIFICATION DATE | | DELIVERY MODE | | |
| 11/02/2012 | | ELECTRONIC | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mikeschramm@besstek.net
mschramm@axialbiotech.com
mschramm@juneaubiosciences.com



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/707,156
Filing Date: November 6, 2000
Appellant(s): Schramm et al

Michael R. Schramm
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 4, 2012.

(1) Grounds of Rejection to be Reviewed on Appeal

Every ground of rejection set forth in the Office action dated April 2, 2012 from which the appeal is taken is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

It is noted that all of the rejections set forth in the Final Rejection mailed April 2, 2012 are based on the fact that this currently appealed application has an effective filing date of November 6, 2000. The claims of the present application do not find support in any of appellants' previously filed applications, which are cited on page 2 of this pending application. This is because the claims of the present application recite edible products which do not find support in the previously filed applications.

(2) Response to Argument

Appellant's arguments filed September 4, 2012 have been fully considered but they are not persuasive.

Appellant's argue that the instant application claims priority back to Schramm US 5,246,046 ('046) having a filing date of January 30, 1992 and accordingly it is not proper to cite Schramm as prior art. Appellant's argument is not convincing. As previously stated, the claims of the present application do not find support in any of appellants' previously filed applications, including Schramm '046. This is because the claims of the present application recite edible products which do not find support in the previously

filed applications. Schramm '046 is directed towards a "Spill Resistant Bubble Container". The effective filing date of the instant claims is November 6, 2000. Appellant's have not provided any reasoning in response to the position of the office as to why the instant claims would be support; Appellant's merely argue that priority was claimed.

Appellant argues that "all of the cited art is non-analogous art". Appellant's do not discuss any of the references specifically but rather support this statement with case law. Appellant's argument is not convincing as it is conclusionary and there is no reasoning, discussion, or evidence as to the prior art cited in the instant rejection and why appellant believes it is non-analogous. Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.

Additionally, in response to applicant's argument that the prior art is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, as stated in the rejection, the prior art cited is in the field of applicant's endeavor **or**, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned. For example, Product Alert (3/23/98) is directed towards a container with a lollipop and candy powder which is in the field of

applicant's endeavor; and Price (US 3,840,678) is directed towards the same problem which the appellant was concerned; Price is directed towards using a funnel to prevent the spillage of a fluid material which is precisely appellant's problem and solution.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Kelly Bekker/

Primary Examiner

Conferees:

/D. Lawrence Tarazano/

Supervisory Patent Examiner, Art Unit 1791

/Benjamin L. Utech/

Primary Examiner